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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re RUFFIN ROAD VENTURE LOT 6, Debtor.	Case No. BK-S-09-17528-bam Chapter 11 **MOTION OF THE ALLIANCE PORTFOLIO TO TRANSFER VENUE TO THE SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION OR, IN THE ALTERNATIVE, FOR RELIEF FROM AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(4)** Hearing Date: July 28, 2009 Hearing Time: 9:30 am Courtroom No.: 3

The Alliance Portfolio ("Alliance") moves the Court for an order transferring venue of Ruffin Road Venture Lot 6's ("Debtor") Chapter 11 bankruptcy case to the Southern District of California, San Diego Division (the "San Diego Bankruptcy Court"), pursuant to 28 U.S.C. § 1412 and Rule 1014 of the Federal Rules of Bankruptcy Procedure. The San Diego Bankruptcy Court is the more appropriate venue based on the interests of justice and for the convenience of the parties because, among other things:

1) the real estate at issue in this case is located in San Diego, California;

2) this Debtor filed two chapter 11 bankruptcy cases in the San Diego Bankruptcy Court in the past year (the second of which was dismissed less than 72 hours before this case was filed); and

3) most, if not all, of the Debtor's creditors are located in and around San Diego, California. For these and other reasons, the San Diego Bankruptcy Court is a more appropriate forum for this chapter 11 case.

Alternatively, Alliance asks that the Court grant it relief from automatic stay under 11 U.S.C. § 362(d)(4). Such relief is warranted because Debtor filed the instant petition solely to delay, hinder, and defraud its creditors. Indeed, this action was filed less than 72 hours after the San Diego Bankruptcy Court entered an order granting the Debtor's motion to dismiss the second of its two previous chapter 11 cases in the past twelve months. In connection with its motion to dismiss, Debtor concealed its intent to file this third chapter 11 petition in a different district. And this case was filed just hours before Alliance's foreclosure sale was to occur. The Court has jurisdiction over the alternative Motion for Relief from the Automatic Stay pursuant to 28 U.S.C. § 1334, and it is properly before the Bankruptcy court pursuant to 28 U.S.C. § 157. The §362 Information Sheet is attached at Exhibit A.

This motion is based on the following memorandum of points and authorities and the Declarations of Gabriella Gilles, Matthew W. Grimshaw, Steve Shevorski and the Request for Judicial Notice filed concurrently herewith, the pleadings and documents on file in this case, the arguments of counsel that will be presented at the time of hearing on the motion, if any, and upon such other and further evidence, both oral and documentary, as may be properly presented to the Court at or before any hearing on the motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is the third Chapter 11 bankruptcy case filed by debtor Ruffin Road Venture Lot 6 ("Debtor") in the past year. Both of Debtor's prior petitions were filed in the Southern

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District of California, San Diego Division (the "San Diego Bankruptcy Court"). Debtor has now filed this case in this court. Secured creditor The Alliance Portfolio ("Alliance") brings this motion, requesting that the Court order that venue be transferred to the San Diego Bankruptcy Court—the forum of Debtor's two previous chapter 11 cases. Alternatively, Alliance seeks an order granting relief from automatic stay pursuant to 11 U.S.C. § 362(d)(4) on the basis that Debtor has filed its petition to delay, harass, and defraud its creditors.

A transfer of venue to the San Diego Bankruptcy Court is proper in that such a transfer would serve both the convenience of the parties and the interests of justice. All of Debtor's creditors are located in California, and most are located within 75 miles of San Diego.[1] Debtor's principal place of business and principal asset—a portion of a business park—are located San Diego, California. The Debtor's two previous voluntary Chapter 11 petitions were filed in the San Diego Bankruptcy Court and were assigned to the Hon. Peter W. Bowie, who is intimately familiar with the Debtor and the details surrounding its estate. Additionally, Judge Bowie has presided over other chapter 11 cases filed by two of Debtor's affiliated entities[2] that own portions of the same business park and which are also owned by Kevin Tucker—the Debtor's principal. As such, the convenience of the parties and the interests of justice are best served by transferring venue of this case to the San Diego Bankruptcy Court.

Alternatively, Alliance is entitled to relief from automatic stay pursuant to 11 U.S.C. § 362(d)(4) because Debtor filed this case to delay, hinder, and defraud its creditors. This is Debtor's third chapter 11 case in the last twelve months, the last two of which were filed within days of the dismissal of the prior action. Perhaps the best evidence of Debtor's intent to delay, hinder, and defraud is how this case was commenced. Debtor moved to dismiss its last case in the San Diego Bankruptcy Court stating that dismissal was "in the best interests of creditors and the estate" because "There are no unsecured creditors in this case. . . . The expense of continuing this case as a Chapter 11 or converting the case to Chapter 7, thus incurring greater administrative costs, would outweigh any meaningful distribution to creditors." (Declaration of Matthew W. Grimshaw ("Grimshaw Decl."), ¶ 12, Ex. F.) Less than three days after that dismissal order was entered, Debtor filed this case. Debtor concealed from the San Diego Bankruptcy Court and creditors its intention to do so. There is no reason to believe that Debtor's economic position has improved since the filing of its motion to dismiss. Indeed, according to Debtor's schedules, its financial situation has worsened, not improved, since it filed its motion to dismiss its second bankruptcy case. This is stall tactic, not a legitimate attempt to reorganize.

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[1] The Debtor's schedules list only 2 creditors whose addresses are outside San Diego County, California. The first is Alliance, who resides in Orange County California. The second is AT&T, whose address is listed as Sacramento, California. Despite this address, AT&T provides services in San Diego County.

[2] These two entities are Ruffin Road Office Park, L.P. and Ruffin Road Venture Lot 3. [See discussion below regarding their prior bankruptcy cases.]

Alliance respectfully requests that the court grant its motion to transfer venue to the San Diego Bankruptcy Court, or in the alternative, that the court grant its motion for relief from stay pursuant to 11 U.S.C. 362(d)(4).

II. RELEVANT FACTS

Kevin Tucker, either directly or indirectly, owns various entities that, in turn, own parts of a commercial business park on Ruffin Road, in San Diego, California. (Grimshaw Decl., ¶¶ 5, 8, 9, 20, 21, 24, 25, 28, 29; Request for Judicial Notice ("RJN"), Exs. 1, 4, 5, 9, 10, 11, 14, 15, 18, 19.) Over the past twenty months, at least three of Mr. Tucker's entities—Ruffin Road Office Park L.P. ("Office Park"), Ruffin Road Venture Lot 3 ("Lot 3"), and Debtor—have filed six chapter 11 bankruptcy petitions. (Id.) This is only case filed in a forum other than the San Diego Bankruptcy Court.

A. **This Is Debtor's Third Chapter 11 Filing In The Past Twelve Months**.

On March 23, 2007, Alliance loaned the sum of $600,000 (the "Alliance Loan") to Debtor, as evidenced by a promissory note and secured by a second-priority deed of trust conveying a security interest in the property commonly known as and located at 3645 Ruffin Road, San Diego, California (the "Property"). (Declaration of Gabriella Gilles ("Gilles Decl."), ¶ 5, Exs. A & B.) The Property is also encumbered by a first-priority deed-

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of-trust-lien in favor of The San Diego County Credit Union ("SDCCU"). (Gilles Decl., ¶ 12; RJN, Ex. 10.)

Debtor failed to make the monthly payments required by the Alliance Loan. (Gilles Decl., ¶ 6.) Consequently, Alliance recorded a Notice of Default and Election to Sell Under Deed of Trust and a Notice of Trustee's Sale. (Id., ¶ 6, Ex. C & D.)

1. ***Debtor's first chapter 11 case was filed in June 2008 to stop a foreclosure sale and then dismissed in July 2008.***

On June 4, 2008, one day before Alliance's foreclosure sale was scheduled to occur, Debtor filed a voluntary chapter 11 petition in the San Diego Bankruptcy Court. (Gilles Decl., ¶7; RJN, Ex. 1.) The case was styled In re Ruffin Road Venture Lot 6, Case Number 08-05009, and was assigned to the Hon. Peter Bowie, Chief Judge of the San Diego Bankruptcy Court. (Grimshaw Decl, ¶7; RJN, Ex. 3.) On July 8, 2008, the case was dismissed based on, among other things, Debtor's failure to file schedules. (Grimshaw Decl., ¶6; RJN Ex. 2.)

2. ***Debtor's second chapter 11 case was filed in July 2008 and dismissed in May 2009.***

A mere six days later, Debtor filed a second chapter 11 petition. (Gilles Decl., ¶ 8; Grimshaw Decl., ¶ 8; RJN, Ex. 4.) The case was styled In re Ruffin Road Venture Lot 6, Case Number 08-06448-PB11, and was assigned to the Hon. Peter Bowie. (Grimshaw Decl., ¶ 8; RJN, Ex. 4.)

To avoid a threatened motion for relief from the automatic stay, Debtor stipulated to the entry of an adequate protection order that required, among other things, monthly payments to Alliance (the "Stipulation"). (Grimshaw Decl., ¶¶ 10-11, Ex. E.; RJN, Ex. 6.) The Stipulation provided protection to Alliance while giving Debtor time to attempt to obtain financing to pay off the Alliance Loan. (Id.) In the Stipulation, the parties agreed, among other things, that if Debtor either failed to make the required monthly payments or failed to pay the Alliance Loan in full by February 28, 2009 (the "Sunset Date"), then Alliance could move for "immediate and full relief from stay" on an *ex parte* basis. (Id.)

On October 6, 2009, Judge Bowie entered an order consistent with the parties' Stipulation (the "Adequate Protection Order"). (Id. at ¶¶ 10-11; RJN, Ex. 6.)

As of February 27, 2009, the day before the Sunset Date, Debtor had not repaid the Alliance Loan in full. (Gilles Decl., ¶ 9.) Debtor filed an emergency motion to postpone the Sunset Date to March 30, 2009, thereby delaying the date by which Alliance could get relief from stay. (Grimshaw Decl., ¶ 19; RJN, Ex.8.) Concurrently with the emergency motion, Debtor filed a motion to dismiss its case. (Grimshaw Decl., at ¶¶ 12-13, Exs. F & G.)

In the motion to dismiss, the Debtor admitted that its only asset was the Property, and that "The creditor body in this case is solely secured creditors related to Debtor's real property." (Grimshaw Decl., at ¶ 12, Ex. F.) Debtor also admitted that Alliance had the right to relief from stay and that SDCCU had obtained relief from stay to record a notice of default. (Id.) Thus, according to Debtor, dismissal of the case was "in the best interests of creditors and the estate." (Id.) In the motion, Debtor did not disclose its intent to file a third bankruptcy case in a new district. (Id.)

At the March 30, 2009, hearing, the court ordered, among other things, that the case be dismissed after the Debtor made an adequate protection payment to SDCCU and a payment to the United States Trustee. (Grimshaw Decl., ¶ 13; Ex. G.) The Court directed the Debtor to make the payments and submit an appropriate order, which it failed to do. (Id.)

On May 4, 2009, the Court heard SDCCU's motion for relief from stay. (Grimshaw Dec., ¶¶ 15 & 19, Ex. H.) At that hearing, the Court issued an order stating that if Debtor did not make the court-ordered adequate protection payment and submit a dismissal order by the close of business on May 8, 2009, as ordered on March 30, 2009, then SDCCU could submit an order for relief from stay and foreclose on the Property. (Id.) In response, Alliance filed an *ex parte* motion for relief from automatic on the basis to ensure that SDCCU did not foreclosure on the Property and extinguish its lien. (Grimshaw Dec., ¶¶ 15-16.)

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Ultimately, Debtor made the payments to SDCCU and the United States Trustee and submitted a dismissal order. (Grimshaw Decl., ¶ 17; RJN, Ex. 8.) On Friday, May 8, 2008, Tom Nelson—Debtor's behind-the-scenes lawyer—asked that Alliance withdraw its *ex parte* motion for relief from stay so that Debtor's dismissal order could be processed. (Grimshaw Decl., ¶ 17.) Although he knew that Debtor intended to file a third bankruptcy case in this district at the time, Mr. Nelson did not disclose that fact when he asked Alliance to withdraw its motion. (Id.; Gilles Decl., ¶ 10.) Lacking vital information, Alliance agreed and withdrew its motion, and Debtor's case was dismissed. (Grimshaw Decl., ¶¶17-18; Gilles Decl., ¶ 10; RJN, Exs. 7 & 8.)

3. ***Debtor's third chapter 11 case was filed in May 2009.***

The following business day, on Monday, May 11, 2009, Debtor filed this case in the District of Nevada. (Grimshaw Decl., ¶ 20; Gilles Decl., ¶ 11; RJN, Ex. 9.) Debtor filed this case hours before Alliance's foreclosure sale was to occur. (Gilles Decl., ¶ 11.) When it chose to file in Las Vegas, Debtor was clearly forum-shopping.

Debtor has virtually no contacts with State of Nevada. In its petition, Debtor admits that its assets are located in San Diego, California, and that all its creditors are located or around San Diego County. At Debtor's §341(a) Meeting of Creditors, Tucker admitted that he resides in Poway, California (located in San Diego County), and that his daughter—the only other officer—also resides in California. (Declaration of Steve Shevorski ("Shevorski Decl."), ¶ k). Tucker further admitted that Debtor has never paid sales or use tax in Nevada. (Id., ¶b). Indeed, Debtor's only link to Nevada is through an incorporation service—Corporation Services of America, Inc.—that effective allows Debtor to lease a mailbox at the 800 E. Charleston Blvd. address listed on its petition. And Debtor is not the only entity operating at that address. At least one other company—and perhaps as many as thirteen other companies—use the same business address.

Moreover, Debtor's schedules confirm that this case is merely a stall tactic because its financial situation has deteriorated since asking to Judge Bowie to dismiss its last case. (Grimshaw Decl., ¶ 20; RJN, Ex. 9.) Specifically, Debtor scheduled unsecured creditors

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that were not disclosed in Debtor's motion to dismiss its second case. (Compare RJN, Ex. 10 [listing approximately $48,000 in unsecured debt] with Grimshaw Decl. ¶12, Ex. F ["The creditor body in this case is solely secured creditors related to Debtor's real property."]

B. **The Chapter 11 Cases Of Debtor's Affiliates—Office Park And Lot 3**.

Additionally, Debtor's affiliates have filed three chapter 11 petitions in the past twenty months. (Grimshaw Decl., ¶¶ 21-30; RJN, Exs. 11-20.) First, on October 14, 2007, Office Park filed a chapter 11 petition in the San Diego Bankruptcy Court. (Grimshaw Decl., ¶ 28; RJN 18.) The United States Trustee filed a motion to dismiss Office Park's case, and on May 1, 2009, Judge Bowie's order granting the motion was entered. (Grimshaw Decl., ¶ 30; RJN, Ex. 20.) Second, on June 4, 2008, Lot 3 filed a chapter 11 petition in the San Diego Bankruptcy Court. (Grimshaw Decl., ¶ 12; RJN; Ex. 11.) On July 8, 2008, an order was entered dismissing Lot 3's case. (Grimshaw Decl., ¶ 22; RJN, Ex. 12.) Finally, on July 14, 2008, Lot 3 filed a second chapter 11 petition in the San Diego Bankruptcy Court. (Grimshaw Decl., ¶ 24; RJN, Ex. 14.) Lot 3 filed a motion to dismiss its case, which was heard concurrently with Debtor's motion to dismiss its second case. (Grimshaw Decl., ¶¶ 19 & 26-27;; RJN, Exs. 8 & 17.) On May 4, 2009, Judge Bowie's order dismissing Lot 3's second chapter 11 case was entered.[3] (Grimshaw Decl., ¶ 26; RJN, Ex. 16.)

III. THE COURT SHOULD TRANSFER VENUE TO THE SAN DIEGO BANKRUPTCY COURT.

Despite having filed its two prior chapter 11 cases in the San Diego Bankruptcy Court, Debtor filed this case in Nevada. Alliance now seeks an order transferring venue of this case to the San Diego Bankruptcy Court.

28 U.S.C. § 1412 and Federal Rule of Bankruptcy Procedure 1014 govern motions to transfer venue. In cases like this, where venue is proper in the forum in which a debtor files its petition, venue may be transferred to another appropriate district if it appears that "the convenience of the parties" or "the interests of justice" will better be served in the

[3] Alliance is also a secured creditor of Lot 3.

alternative forum. (28 U.S.C. § 1412; Fed. R. Bankr. P. 1014. See also In re Commonwealth Oil Refining Co., 596 F.2d 1239, 1247 (5th Cir. Tex. 1979); In re B.L. of Miami, Inc., 294 B.R. 325, 328-33 (Bankr. D. Nev. 2003).)

A. **Venue Should Be Transferred To The San Diego Bankruptcy "For The Convenience Of The Parties."**

In deciding whether a transfer of venue is warranted "for the convenience of the parties," courts generally consider the following factors:

1. The proximity of creditors of every kind to the new forum;
2. The proximity of the bankrupt (debtor) to the new forum;
3. The proximity of the witnesses necessary to the administration of the estate to the new forum;
4. The location of the assets;
5. The economic administration of the estate of proceeding in the new forum; and
6. The necessity for ancillary administration if bankruptcy should result.

(Commonwealth Oil Refining Co., 596 F.2d at 1247 (5th Cir. Tex. 1979). See also, In re Midland Assoc., 121 B.R. 459, 460 (Bankr. E.D. Pa. 1990).)

Indeed, courts in this district have stated that the six factors articulated in In re Commonwealth Oil Refining Co. are to be considered in determining whether a transfer of venue is warranted to serve "the convenience of the parties." (B.L. of Miami, Inc., 294 B.R. at 329.) There, the court raised the question of transferring venue sua sponte and issued an order to show cause why venue was proper. (294 B.R. at 327-28.) Ultimately, the B.L. of Miami, Inc. court held that the In re Commonwealth Oil Refining Co. factors weighed in favor of transfer of venue because 1) the majority of creditors were located in the alternate forum, 2) the debtor's principal place of business and assets were located in the alternate

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forum, 3) courts in the alternate forum were better equipped to oversee reorganization, and 4) it was more economical to transfer venue. (294 B.R. at 328-33.) Thus, although venue was initially proper in Nevada as the place of the debtor's incorporation, the court ordered that the case be transferred to an alternative forum for "the convenience of the parties." (Id.)

Although courts recognize that each of the In re Commonwealth Oil Refining Co. factors must considered, they also recognize that some of these factors may be more important than others. For example, courts generally hold that the location of the debtor's property is a substantial and often determinative factor when deciding whether to grant a motion for transfer of venue. (In re 19101 Corp., 74 B.R. 34 (Bankr. D.R.I. 1987) [transferring venue to location of debtor's real property which secured creditors' claims]; In re Old Delmar Corp., 45 B.R. 883, 884-85 (S.D.N.Y. 1985) [transferring venue to location of debtor's real property assets].) Similarly, the location of the debtor's creditors is given great weight in deciding whether to transfer venue of a case. (See, e.g., In re Developers of Caguas, Inc., 26 B.R. 977 (Bankr. E.D.N.Y. 1983) [transferring venue where debtor's sole asset was located in the alternate venue and three of four creditors resided in the alternative venue]; In re Spicer Oaks Apartments, Ltd., 80 B.R. 142 (Bankr. E.D. Mo. 1987) [transferring venue to district where debtor's property was located, the sole secured creditor was located, and the vast majority of unsecured creditors were located].)

Applying the In re Commonwealth Oil Refining Co. factors to Debtor's case demonstrates that venue for this bankruptcy case should be transferred to the San Diego Bankruptcy Court.

1. The San Diego Bankruptcy Court is a more convenient forum for creditors.

According to Debtor's schedules, all but two of its creditors are located in San Diego County. (RJN, Ex. 10.) Alliance and AT&T are the only creditors located outside San Diego County. Alliance resides in Orange County (which is located immediately north of San Diego County), and AT&T[4] provides services in San Diego County. (Id.) Thus,

[4] According to Debtor's schedules, AT&T's address is Sacramento, CA. (RJN, Ex. 10.)

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most—if not all—of Debtor's creditors reside in and around San Diego, California. Transferring this case to the San Diego Bankruptcy Court would be more convenient for such creditors as they would not be forced to incur the added costs of participating in this case that Debtor seeks to foist upon them—namely hiring local counsel or new counsel that would have to invest time "getting up to speed" on this case.

As such, the San Diego Bankruptcy Court is a more convenient forum than this court for Debtor's creditors, and this factor favors transferring venue to that court. Alliance understands that one or more of Debtor's other creditors will be joining in this motion. Any such joinders will further confirm that the San Diego Bankruptcy Court is a more convenient forum for this case.

2. The San Diego Bankruptcy Court is a convenient forum for Debtor.

The San Diego Bankruptcy Court is also convenient for Debtor. First, Debtor's officers live in California, and Debtor's decision-marker—Tucker—lives in San Diego County. Second, Debtor's assets are located in San Diego, California. (RJN, Ex. 9.) Third, San Diego, California is the only place that Debtor's conducts business. Although incorporated there, Debtor has no other ties to Nevada. At best, Debtor can assert that it rents a mailbox at an address used by it and numerous other entities as a mail-drop. Fourth, and perhaps most important, Debtor selected the San Diego Bankruptcy Court as its forum of choice for two prior bankruptcy proceedings, each filed within one year of this case. (RJN, Exs. 1 & 4.) As such, Debtor cannot complain that the San Diego Bankruptcy Court is an inconvenient forum. Thus, this factor favor transferring venue to the San Diego Bankruptcy Court.

3. The San Diego Bankruptcy Court is a more convenient forum for potential witness.

For these same reasons, the San Diego Bankruptcy Court is more convenient for potential witnesses. Specifically, potential witnesses for Debtor and its creditors are located in and around San Diego, California—near the Property. Therefore, this factor favors transferring venue to the San Diego Bankruptcy Court.

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4. Debtor's assets are located in and around San Diego, California.

Debtor's principal asset—the Property—is located in San Diego, California. (RJN, Ex. 9.) As discussed above, the location of a debtor's assets is highly persuasive, if not determinative, of the venue in which a debtor's case should proceed. (In re 19101 Corp., 74 B.R. at 35-36; In re Old Delmar Corp., 45 B.R. at 884-85.) Thus, the location of the Property strongly favors transferring venue to the San Diego Bankruptcy Court. (See In re B.L. of Miami, Inc., 294 B.R. at 332 [transferring venue from Nevada to Florida and stating "[i]t is that judge in [the community where the debtor's assets are located] that is in a better position to judge whether the particular enterprise 'is a good candidate for reorganization . . . in the economic community in which it operates'" and "'matters concerning real property have always been of local concern and traditionally are decided at the situs of the property.'"] (internal citations omitted).)

5. Debtor's estate can be more economically administered in the San Diego Bankruptcy Court.

Debtor's bankruptcy estate can be more efficiently and economically administered in the San Diego Bankruptcy Court. First, Judge Bowie has presided over Debtor's two prior chapter 11 cases as well as the chapter 11 cases of two of Debtor's affiliates, and Judge Bowie is familiar with history of those cases. Second, Debtor's assets and witnesses are located in and around San Diego, California, and therefore, Debtor's transaction-costs would be lower if the estate were administered in the San Diego Bankruptcy Court. Likewise, most—if not all—of Debtor's creditors are located in and around San Diego, and therefore, its creditors' transaction-costs would be lower if the estate were administered in the San Diego Bankruptcy Court. Thus, this factor favors transferring venue to the San Diego Bankruptcy Court.

6. Any ancillary administration can be done most efficiently in San Diego, California.

Finally, should any ancillary administration be required, it would be significantly more convenient for all involved to have venue where the subject Property is located.

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Thus, all of the factors articulated in In re Commonwealth Oil Refining Co. favor transferring venue to the San Diego Bankruptcy Court. To best serve "the convenience of the parties," the Court should do so.

B. Venue Should Be Transferred To The San Diego Bankruptcy Court In The "Interests Of Justice."

"A separate basis for the transfer of a case pursuant to Rule 1014(a)(1) is the 'interest of justice' test . . . . When applying the 'interest of justice' test, 'the court applies a broad and flexible standard,' considering whether transfer of venue 'will promote the efficient administration of the estate, judicial economy, timeliness and fairness.'" (In re B.L. of Miami, Inc., supra, 294 B.R. at 334 (internal citations omitted).)

The "interests of justice" overwhelmingly favor transferring venue to the San Diego Bankruptcy Court. Among other things, all of Debtors' creditors reside in California, and the vast majority of its creditors reside in and around San Diego. (RJN, Ex. 10.) Similarly, Debtor's principal asset—the Property—is located in San Diego. (RJN, Ex. 9.) Further, most—if not all—of the parties' potential witnesses are also located in and around San Diego. Additionally, Debtor's two prior chapter 11 cases were filed in the San Diego Bankruptcy Court and presided over by Judge Bowie (who also presided over the prior bankruptcy cases of Debtor's two affiliates).

Moreover, it would be inherently unfair to allow Debtor to proceed in this forum. Based on its own motion, Debtor's previous case was dismissed less than 72 hours before this case was filed. In its motion to dismiss, Debtor asserted that dismissal was in the best interests of creditors. (Grimshaw Decl., at ¶ 12, Ex. F.) Then, after the motion was granted, Debtor delayed more than one month in making the final payments ordered by Judge Bowie and submitting the required dismissal order. (Grimshaw Decl., ¶¶ 14-17.) Given that Debtor's prior case was dismissed on a Friday and this case was filed the following Monday, it is clear that Debtor intentionally delayed submitting a dismissal order to Judge Bowie so that it could orchestrate this filing in a new forum. Such litigation tactics should not be condoned. Indeed, if Judge Bowie had known of Debtor's intentions, it is unlikely

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that he would have signed Debtor's dismissal order. If Debtor desires to prosecute a third chapter 11 case, it should do so in the San Diego Bankruptcy Court, the site of its prior two chapter 11 cases.

Thus, the "interests of justice" demand that this case be transferred to the San Diego Bankruptcy Court.

In sum, there are two independent reasons that justify transferring this case to the San Diego Bankruptcy Court—"the convenience of the parties" and "the interests of justice." As such, Alliance respectfully requests that the Court enter an order transferring this case to the United States Bankruptcy Court for Southern District of California.

IV. ALTERNATIVELY, IF THE COURT DOES NOT ISSUE AN ORDER TRANSFERRING VENUE, THEN IT SHOULD GRANT RELIEF FROM AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(4)

Alternatively, if the court does not transfer venue of this case to the San Diego Bankruptcy Court, then it should grant Alliance in rem relief from stay under §364(d)(4).

A creditor whose debt is secured by residential real property may move under § 362(d)(4) for an order granting in rem relief. (In re Muhaimin, 343 B.R. 159, 166 (Bankr. D. Md. 2006).) Section 362(d)(4) requires the court to lift the automatic stay:

> (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either –
> (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
> (B) multiple bankruptcy filings affecting such real property.
> If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court . . . .

(11 U.S.C. § 362(d)(4).)

A creditor seeking in rem relief must demonstrate that the filing of the bankruptcy petition was part of a "scheme" to "delay," "hinder," and "defraud." (In re Young, 2007 Bankr. LEXIS 229, *22-23, 2007 WL 1662644 (Bankr. S.D. Tex. Jan. 10, 2007) (citing In re Gould, 348 B.R. 78, 80 (Bankr. D. Mass 2006)).)

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From the date of its initial chapter 11 filing, it has been clear that Debtor has "schemed" to "delay" and "hinder" Alliance's efforts to foreclose on the Property, and Debtor has used "fraud"—or acts of deception and misrepresentation—to accomplish that goal. The June 4, 2008, petition was filed exactly one day before the date scheduled for the foreclosure sale of the Property. The case was dismissed approximately one month later—on July 8, 2008—based on Debtor's failure to comply with its obligations under the Bankruptcy Code. Six days later, Debtor filed a second chapter 11 petition, which was later dismissed based on Debtor's own motion. This third case was filed the next business day, which was also the day Alliance's foreclosure sale was scheduled. (Gilles Decl., ¶ 11.)

Importantly, during Debtor's second case, Debtor stipulated that if it did not pay Alliance in full by the Sunset Date, then Alliance would be entitled to *ex parte* relief from stay. (Grimshaw Decl., ¶ 10, Ex. E; RJN, Ex. 6.) In February 2009, Debtor asked that the Sunset Date be delayed by approximately 30 days to allow Debtor's motion to dismiss to be heard. (Grimshaw Decl., ¶ 12, Ex. F.) Debtor argued that granting its motion to dismiss would be in the best interests of creditors. (Id.) Judge Bowie granted the motion, but ordered Debtor to make certain payments before submitting the dismissal order. (Grimshaw Decl., Ex G.) Instead of immediately making the payments and submitting a dismissal order, Debtor stalled. It is now clear that Debtor was orchestrating this filing during that time.

When Debtor finally submitted its dismissal order, it did so such that the dismissal order would be entered on a Friday. Debtor's dismissal order was submitted after Alliance's *ex parte* motion for relief from stay had been filed. (Grimshaw Decl., ¶¶ 15-17.) When Debtor's counsel called Alliance's counsel and asked that the *ex parte* motion be withdrawn so that the dismissal order could be processed, Debtor's counsel concealed the fact that Debtor intended to file a new bankruptcy case the following business day in this district. (Grimshaw Decl., ¶ 17.) If Alliance had known that Debtor would do so, Alliance would not have consented to withdraw its motion. (Id.; Gilles Decl. ¶ 10.)

Moreover, it is unlikely that Judge Bowie would have granted Debtor's motion to

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dismiss its prior case if Debtor had disclosed its intention to immediately file this case in a different district. This is particularly true given that Debtor's financial condition has deteriorated, not improved, in the time since its motion to dismiss was filed. Specifically, Debtor scheduled approximately $48,000 in unsecured debt that it did not have when it filed its motion to dismiss. (Compare RJN, Ex. 10 [listing approximately $48,000 in unsecured debt] with Grimshaw Decl. ¶12, Ex. F ["The creditor body in this case is solely secured creditors related to Debtor's real property."]

Thus, Debtor has repeatedly attempted to "hinder" and "delay" Alliance's foreclosure efforts, and an integral part of Debtor's efforts involved concealing from Judge Bowie and creditors its intention to file another bankruptcy in a different district (i.e. "fraud"). Therefore, Alliance is entitled to relief from stay under 11 U.S.C. § 362(d)(4).

V. CONCLUSION

Alliance respectfully requests that the court enter an order granting its motion to transfer the venue of this case to the San Diego Bankruptcy Court because such a transfer would be "convenient for the parties" and in "the interests of justice." First, transferring this case to the San Diego Bankruptcy Court would be "convenient for the parties" because 1) most—if not all—of Debtor's creditors are located in or around San Diego, California; 2) Debtor is located in San Diego, California; 3) the Property is located in San Diego, California; 4) the proximity of Debtor, its creditors, and the Property to San Diego, California means that the parties' prospective witnesses are located in or around San Diego, California; 5) Debtor's estate can be more economically administered in San Diego, California (a) because of the location of Debtor, its creditors, and their prospective witnesses and (b) because Debtor has filed two chapter 11 cases there in the past year and Judge Bowie has presided over both cases, giving him familiarity with Debtor; and 6) any ancillary administration can be most efficiently conducted in San Diego, California. Second, for the same reasons, transferring this case to the San Diego Bankruptcy Court would serve the "interest of justice" and would 1) promote efficient administration of the estate, 2) serve judicial economy, 3) allow the timely administration, and 4) be fair to all parties in interest.

Alternatively, Alliance respectfully requests that the Court grant relief from automatic stay pursuant to 11 U.S.C. 362(d)(4) because this case was filed as part of a scheme to delay, hinder, and defraud creditors, including Alliance.

DATED this 23rd day of June, 2009.

RUTAN & TUCKER, LLP

JONES VARGAS

By: /s/ Janet L. Chubb
JANET L. CHUBB

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CERTIFICATE OF SERVICE

1. On June 23, 2009, I served the following document(s):

MOTION OF THE ALLIANCE PORTFOLIO TO TRANSFER VENUE TO THE SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION OR, IN THE ALTERNATIVE, FOR RELIEF FROM AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(4)

2. I served the above-named document(s) by the following means to the persons as listed below:

■ a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

- NANCY L. ALLF nancy_allf@gshllp.com, karen_lawrence@gshllp.com;angela_nakamura@gshllp.com
- U.S. TRUSTEE - LV - 11 USTPRegion17.lv.ecf@usdoj.gov

■ b. **United States mail, postage fully prepaid** (list persons and addresses):

RUFFIN ROAD VENTURE LOT 6
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LAS VEGAS, NV 89104

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PAMELA LABRUYERE
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SAN DIEGO, CA 92130

□ c. **Personal Service** (list persons and addresses):
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□ e. **By fax transmission** (list persons and fax numbers):

□ f. **By messenger**:

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 23rd day of June, 2009.

Tawney Waldo	/s/ Tawney Waldo
Name	Signature